Perbadanan Pengurusan Straits View v Permas Jaya Sdn Bhd

HIGH COURT (JOHOR BAHRU) — NO 22NCVC-139–04 OF 2012
VERNON ONG J
12 OCTOBER 2012

Civil Procedure — Summary judgment — Application for — Non-payment of maintenance charges — Triable issues — Whether defendant had raised triable issues — Whether summary judgment ought to entered for part of claim

Land Law — Strata title — Maintenance charges — Non-payment of — Whether defendant required to pay contributions in respect of provisional block — Whether acts of management corporation ultra vires and void — Strata Titles Act 1985 ss 45 & 53

The defendant was the developer of the condominium project known as the Straits View Condominium ('the condominium'), which consisted of five completed residential blocks and a provisional block scheduled to be completed in December 2013. The plaintiff was the management corporation established under s 39 of the Strata Titles Act 1985 ('the Act') to manage the common property of the condominium and keep it in a state of good and serviceable repair. By virtue of s 45(1) of the Act, the plaintiff was required to establish a management fund for the purpose of controlling, managing and administering its duties as a management corporation. Pursuant thereto the plaintiff was empowered by s 45(3) of the Act to levy contributions on the proprietors of the condominium in proportion to their share units in the condominium. The plaintiff claimed that at the second annual general meeting ('AGMs') it had tabled a budget for the amount to be levied as contributions on the proprietors of the units in the condominium. The plaintiff claimed that at the third AGM it had been agreed by a majority that the proprietors' contribution to the management fund would be fixed at RM24.20 per share unit per month effective from 13 August 2011. The defendant objected to the plaintiff's demand for the contributions in respect of the provisional block. The plaintiff filed the present action claiming for various contributions amounting to RM1,224,835.95 in respect of the provisional block. The plaintiff then applied for summary judgment to recover the contributions from the defendant as a debt due to it. In its defence the defendant submitted that it was not required to pay contributions to the plaintiff in respect of the provisional block, which was outside the area being managed by the management corporation, when the provisional block was not receiving any benefit or services from the plaintiff. The defendant also submitted that the acts

of the plaintiff in levying the contributions during the second and third AGMs were ultra vires and void as they were contrary to s 45(3)(a) of the Act. The defendant also claimed that the plaintiff's failure to serve on the defendant the two separate notices required under ss 53(1) and (2) of the Act of the Act prior to the filing of this action meant that it did not have any valid cause of action against it.

Held, entering judgment for part of the plaintiff's claim together with interest and costs:

(1) In the present case, as the provisional strata title in respect of the provisional block had already been issued, the provisional block came under the purview of the plaintiff management corporation. It was abundantly clear that the language employed by the Act was clear and unambiguous and as such it was not the function of this court to rewrite the statute in a way it considered fair, just and reasonable. It was the clear and manifest object and intention of the Act that the management corporation should be established for the purposes of controlling, managing and administering of the common property and towards that end it was required to establish a management fund. Thus, the defendant's contention that s 45 of the Act did not include the proprietor of a provisional block to pay a contribution to the plaintiff was devoid of any merit (see para 20).

(2) The facts as corroborated by the minutes of the second and third AGM clearly support the finding that the plaintiff had complied with s 45(3) of the Act when it proceeded to levy monthly contributions on the defendant and other proprietors of the parcels of land in the condominium. Thus, the defendant's contention that those acts of the plaintiff were ultra vires and void was without merit (see paras 24–25).

(3) The defendant's contention that the plaintiff did not have any valid cause of action against it because of its failure to serve two separate notices required under s 53(1) and (2) of the Act prior to the filling of this action was misconceived. The s 53 notice was not mandatory in nature and the plaintiff had a discretion as to whether to issue the notice or not (see para 27).

(4) Under the deed of covenant the plaintiff was entitled to levy interest at 10% in respect of late contributions (see para 35).

(5) There was no basis for any set off by the defendant as the premium for fire insurance was not included in the contribution. As the defendant had not shown that there were any triable issues, summary judgment was entered for part of the claim in the sum of RM793,555.40 with interest and costs (see paras 37–38).

[Bahasa Malaysia summary

Defendan merupakan pemaju projek kondominium yang dikenali sebagai Straits View Condominium ('kondominium'), yang mempunyai lima blok kediaman siap dibina dan blok sementara yang dijadualkan siap pada Disember 2013. Plaintif merupakan perbadanan pengurusan yang ditubuhkan di bawah s 39 Akta Hak Milik Strata 1985 ('Akta') untuk menguruskan harta bersama kondominium dan memastikan ia dalam keadaan yang baik dan boleh diperbaiki. Menurut s 45(1) Akta, plaintif dikehendaki mewujudkan dana pengurusan bagi maksud mengawal, mengurus dan mentadbir tugasnya sebagai perbadanan pengurusan. Selaras dengan itu, plaintif telah diberikan kuasa oleh s 45(3) Akta untuk melevi caruman daripada pemilik kondominium berkadaran dengan unit syer mereka kondominium. Plaintif mendakwa bahawa pada mesyuarat agung tahunan kedua ('AGM'), ia telah membentangkan bajet bagi amaun yang hendak dilevikan sebagai caruman daripada pemilik unit dalam kondominium. Plaintif mendakwa bahawa pada AGM ketiga ia telah dipersetujui oleh majoriti bahawa caruman pemilik kepada pengurusan dana akan ditetapkan pada RM24.20 seunit saham sebulan berkuat kuasa dari 13 Ogos 2011. Defendan membantah tuntutan bagi caruman plaintif untuk blok sementara. Plaintif memfailkan tindakan ini untuk menuntut pelbagai caruman berjumlah RM1,224,835.95 bagi blok sementara. Plaintif kemudiannya memohon penghakiman ringkas untuk mendapatkan caruman daripada defendan sebagai hutang kepadanya. Dalam pembelaannya, defendan menghujahkan bahawa ia tidak dikehendaki membayar caruman kepada plaintif bagi blok sementara, yang berada di luar kawasan yang diuruskan oleh perbadanan pengurusan, sedangkan blok sementara tersebut tidak menerima sebarang faedah atau perkhidmatan daripada plaintif. Defendan juga menghujahkan bahawa tindakan plaintif dalam melevikan caruman semasa AGM kedua dan ketiga adalah ultra vires dan tidak sah kerana ia bertentangan dengan s 45(3)(a) Akta. Defendan juga mendakwa bahawa kegagalan plaintif untuk menyampaikan dua notis berasingan yang dikehendaki di bawah s 53(1) dan (2) Akta kepada defendan sebelum pemfailan tindakan ini membawa maksud bahawa ia tidak mempunyai kausa tindakan yang sah.

Diputuskan, memasukkan penghakiman bagi bahagian tuntutan plaintif bersama-sama dengan faedah dan kos:

(1) Dalam kes ini, oleh kerana hak milik strata sementara bagi blok sementara telah pun dikeluarkan, blok sementara berada di bawah bidang kuasa perbadanan pengurusan plaintif. Adalah jelas bahawa bahasa yang digunakan dalam Akta adalah jelas dan tidak samar-samar dan oleh itu tidaklah menjadi fungsi mahkamah ini untuk menggubal semula undang-undang tersebut dengan cara yang ia anggap adil, saksama dan munasabah. Adalah menjadi objek yang jelas dan nyata dan hasrat Akta bahawa perbadanan pengurusan hendaklah ditubuhkan bagi

maksud mengawal, mengurus dan mentadbir harta bersama dan dengan itu ia perlu menubuhkan sebuah pengurusan dana. Oleh itu, hujah defendan bahawa s 45 Akta tidak termasuk pemilik blok sementara untuk membayar caruman kepada plaintif adalah tidak bermerit (lihat perenggan 20).

(2) Fakta seperti yang disokong oleh minit AGM kedua dan ketiga jelas menyokong dapatan bahawa plaintif telah mematuhi s 45(3) Akta apabila ia terus melevikan caruman bulanan kepada defendan dan pemilik-pemilik petak tanah yang lain di kondominium tersebut. Oleh itu, hujahan defendan bahawa tindakan plaintif adalah ultra vires dan tidak sah adalah tanpa merit (lihat perenggan 24–25).

(3) Hujahan defendan bahawa plaintif tidak mempunyai apa-apa kausa tindakan yang sah terhadapnya atas kegagalan untuk menyampaikan dua notis berasingan yang dikehendaki di bawah s 53 (1) dan (2) Akta sebelum pemfailan tindakan ini adalah suatu salah tanggapan. Notis s 35 tidak wajib dan plaintif mempunyai budi bicara sama ada untuk mengeluarkan notis tersebut atau pun tidak (lihat perenggan 27).

(4) Di bawah surat ikatan perjanjian plaintif berhak untuk mengenakan faedah pada kadar 10% bagi caruman yang lewat dibuat (lihat perenggan 35).

(5) Tiada asas bagi mana-mana penolakan oleh defendan kerana premium bagi insurans kebakaran tidak termasuk dalam caruman. Oleh kerana defendan tidak menunjukkan bahawa terdapat apa-apa isu-isu yang boleh dibicarakan, penghakiman ringkas telah dimasukkan bagi bahagian tuntutan berjumlah RM793,555.40 dengan faedah dan kos (lihat perenggan 37–38).]

Notes

For cases on application for, see 2(4) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 8443–8501.

For cases on maanagement charges, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 5275–5279.

Cases referred to

Barnes v Jarvis [1953] 1 All ER 1061, QBD (refd)

CIMB Bank Bhd (formerly known as Bumiputra-Commerce Bank Bhd) v World Nova Sdn Bhd (Pang Ming Wa, proposed intervener) [2010] 7 MLJ 100, HC (refd)

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345, FC (refd)

Majlis Peguam v Tan Sri Dato' Mohamed Yusoff bin Mohamed [1997] 2 MLJ 271, SC (refd)

Majlis Perbandaran Pulau Pinang v Boey Siew Thian & Ors [1979] 2 MLJ 127, FC (distd)

Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd [2002] 2 SLR 1, CA (refd)
Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113, FC (refd)
Mokhtar bin Abdul Razak & Anor v Shamsiah bte Saman (suing as widow and beneficiary to Abdul Razak bin Hj Senawi, deceased) [1997] 1 MLJ 493, CA (refd)
Multi-Purpose Holdings Bhd v Ketua Pengarah Hasil Dalam Negeri [2006] 2 MLJ 498, CA (refd)
NKM Holdings Sdn Bhd v Pan Malaysian Wood Bhd [1987] 1 MLJ 39, SC (refd)
Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal [2005] 3 MLJ 97, FC (refd)
Project Blue Sky v ABA (1998) 153 ALR 490, HC (refd)
PP v Ong Ah Kau & Ors [1976] 2 MLJ 31 (refd)
R v Commissioners of Inland Revenue, ex parte Newfields Developments Ltd [2001] 4 All ER 400, HL (refd)
Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy [1995] 1 MLJ 817, FC (refd)
Sing Hoe Motor Co Ltd v PP [1968] 2 MLJ 54 (refd)
Soon Kong Meng & Anor v Lee Thye & Ors [1995] 3 MLJ 544, FC (refd)
Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor [2007] 6 MLJ 581, FC (refd)
Tan Sek Ho v Singapore Dental Board [1999] SLR 757, HC (distd)
United Hokkien Cemetries, Penang v The Board, Majlis Perbandaran Pulau Pinang [1979] 2 MLJ 121, FC (refd)
United Overseas Bank (M) Sdn Bhd v UJA Sdn Bhd [2009] 6 MLJ 857, CA (refd)
Vengadasalam v Khor Soon Weng & Ors [1985] 2 MLJ 449, SC (refd)
Vickers, Sons & Maxim Ltd v Evans [1910] AC 444, HL (refd)
Yong Tet On Paul, ex p Chung Khiaw Bank Ltd, Re [1996] 1 MLJ 721, HC (refd)

Legislation referred to

Building Maintenance and Strata Management Act (Chapter 30C) [SG] s 41(1)
Dentists Act (Cap 76) [SG] s 17
Income and Corporation Taxes Act 1988 [UK] s 416 (6)
Interpretation Acts 1948 and 1967 s 17
Legal Profession Act 1976 s 15
Local Government Act 1976 s 80
Strata Titles Act 1985 ss 4, 39, 39(1), 41A(2)(b), 43, 43(2), 45, 45(1), (3), (3)(a), (3)(b), (3)(c), 52, 53, 53(1), (2), 67A(2)
Rules of Court 2012 O14 r 3(1)

Pang Kong Seng (KS Pang & Co) for the plaintiff.
Chok Chin You (Yeo, Tan, Hoon & Tee) for the defendant.

Vernon Ong J:

[1] On 31 July 2012, the court entered judgment for part of the plaintiff's claim for summary judgment against the defendant. The grounds of the decision are as follows:

BRIEF ACCOUNT OF THE FACTS

[2] The plaintiff is the management corporation of a condominium known as Straits View Condominium, Bandar Baru Permas Jaya ('the condominium') established under s 39 of the Strata Titles Act 1985 ('STA 1985').

[3] The defendant was the developer of the condominium project.

[4] There are five residential blocks in the condominium project which are currently being managed by the plaintiff, namely Blocks A, B, C, D and F.

[5] The defendant is constructing a new residential block known as Block E ('the provisional block'). The provisional block is scheduled to be completed in December 2013.

[6] The provisional block and the condominium are held under one land title, namely GRN 49159 Lot 52807 Mukim Plentong, Daerah Johor Bahru. A provisional strata title has been issued in respect of the provisional block.

[7] The plaintiff's claim for various contributions amounting to RM1,224,834.95 is premised on ss 43 and 45 of the STA 1985. The contributions as regards the Provisional Block comprises of (a) RM310,171.40 for Sept 2011 – March 2012; (b) RM483.384 for Sept 2010 – August 2011; (c) RM270.662.69 for Jan 2010 – Aug 2010; and (d) RM160,616.86 for Aug 2009 – December 2009:

(a) s 43(2) of the STA 1985 empowers the plaintiff to, inter alia, (i) recover from any parcel proprietor any sum expended by the plaintiff in respect of that proprietor's parcel; and (ii) collect during the initial period by way of contributions from proprietors in proportion to their share units or provisional share units of their respective parcels or provisional blocks;

(b) pursuant to s 45(1) of the STA 1985, the plaintiff is required to establish a management fund to manage and administering the common property and discharging any other obligations of the plaintiff;

(c) during general meeting, the plaintiff may (for the purposes of sub-s (1) of s 45 of the STA 1985) determine the amounts to be raised and interest

payable in respect of late contributions; and levy contribution on the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks; and

(d) under s 52 of the STA 1985, the plaintiff shall be entitled to recover the contributions from the defendant as a debt due to it.

[8] Upon perusing the affidavits filed by the parties hereto, the court is satisfied that the plaintiff has made out a prima facie case. Accordingly, the burden shifted upon the defendant to show that there are triable issues or defence on merits.

[9] The defendant has objected to the plaintiff's demand for the contributions. The defendant defence to the plaintiff's application is premised on four principal grounds:

(a) on a true construction of s 45 of the STA 1985, the reference to 'provisional lot' is restricted to a provisional lot which is actually receiving benefit or services from the management corporation and or is inside the area which is managed by the management corporation;

(b) the acts of the plaintiff in immediately levying the contributions under s 45(3) of the STA 1985 during the second and third AGMs (and without prior complying with s 45(3)(a) of the STA 1985) are acts that are ultra vires, void and invalid;

(c) the plaintiff does not have any valid cause of action against the defendant as the plaintiff failed to comply with ss 53(1)–53(2) of the STA 1985 — namely, the plaintiff's failure to serve on the defendant the two separate written notices before filing this action; and

(d) the contributions of RM270,662.69 and RM160,616.86 are not contributions approved in any AGM of the plaintiff and or are in fact contributions in relation to periods of time preceding the two AGMs of the plaintiff.

GROUND (A)

[10] Learned counsel for the defendant submitted that nowhere in s 45 of the STA 1985 is it stated that (a) the proprietor of a provisional block is required to pay contribution to the management corporation when the provisional block is not receiving any benefit or services from the management corporation; and (b) the provisional block is outside the area which is being managed by the management corporation. It would be unjust to require the defendant to pay contributions even though it is not receiving any benefits or services from the

plaintiff. Parliament is presumed not to intend an unfair or unjust result in its legislations (*Project Blue Sky v ABA* (1998) 153 ALR 490; *Multi-Purpose Holdings Bhd v Ketua Pengarah Hasil Dalam Negeri* [2006] 2 MLJ 498 (CA); s 17A of the Interpretation Acts 1948 and 1967; *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97 (FC); *Soon Kong Meng & Anor v Lee Thye & Ors* [1995] 3 MLJ 544; *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy* [1995] 1 MLJ 817, pp 824–827 (SC); *United Hokkien Cemetries, Penang v The Board, Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121, p 123; *Barnes v Jarvis* [1953] 1 All ER 1061, p 1063).

Decision

[11] In construing a statute the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself (see *NKM Holdings Sdn Bhd v Pan Malaysian Wood Bhd* [1987] 1 MLJ 39 (SC); *Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd v Fawziah Holdings Sdn Bhd* [2006] 4 MLJ 113 (FC); *Vengadasalam v Khor Soon Weng & Ors* [1985] 2 MLJ 449 (SC); *Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor* [2007] 6 MLJ 581 (FC)).

[12] In *CIMB Bank Bhd (formerly known as Bumiputra-Commerce Bank Bhd) v World Nova Sdn Bhd (Pang Ming Wa, proposed intervener)* [2010] 7 MLJ 100 Mohd Zawawi JC said:

> It is settled law that in construing any statutes, the first task is to look at the words in the legislation and apply the plain meaning of the words in the statute and if there is any ambiguity to the words used, the court is duty bound to accept it even if it may lead to mischief. The rationale is simple. The court's duty is not to legislate, that duty lies with Parliament. If, however, the words used are not clear, then the courts may adopt the purposive approach in construing the meaning of the words used (see *Public Prosecutor v Tan Tatt Eek & other appeals* [2005] 1 CLJ 713; *Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385; [2002] 1 CLJ 645; *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 169; *Yeo Peck Chie v KS Gill & Co* [1946] MLJ 131; *Maror & St Mellons Rural District Council v Newport Corporation* [1952] AC 189 (HL); *Woodward v Watt* (1853) 2 E & B 452; and *Warburton v Loveland* [1932] 2 D & Cl (HL) 480).

[13] It is true that courts have sometimes to read words into provisions in an Act of Parliament to prevent an absurdity from resulting. But where the language employed is clear and unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable (*United Overseas*

Bank (M) Sdn Bhd v UJA Sdn Bhd [2009] 6 MLJ 857 at p 860 (CA)). As Seah SCJ said in *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987]1 MLJ 39:

> It must almost be borne in mind that we are judges, not legislators. The constitutional function of the courts is not only to interpret but also to enforce the laws enacted by Parliament. In enforcing the law we must be the first to obey it. It should be noted that the power of a court to proceed in a particular course of administering justice, was one of substance and not merely of form. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. The court has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. It seems to us unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature (see Lord Chelmsford in *R v Hughes* [1988] LR 1 PC 81 at p 91 and Lord Macnagthen in *Vacher & Sons v London Society of Compositors* [1913] AC 107).

[14] In *Vickers, Sons & Maxim Ltd v Evans* [1910] AC 444, Lord Loreburn LC said (at p 445):

> My Lords, this appeal may sere to remind us of a truth sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here not what the Act ought to have said, but what it does say; … The appellant's contention involves reading words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

[15] In interpreting a statute effect must be given to the object and intent of Parliament in enacting the statute. In *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 Edgar Joseph Jr FCJ delivering the judgment of the Federal Court said at p 352:

> It is right to say at the risk of being trite, that in interpreting a statute, what the court is endeavouring to do is to give effect to the object and intent of Parliament in enacting that statute. In *Cheatley v R* (1972) 127 CLR 291,
>
> Barwick CJ said at p 296: 'In construing the section we are seeking Parliament's intention'. Similarly, in *A-G (Canada) v Hallet & Carey Ltd* [1952] AC 427, Lord Radcliffe said at p 449: '… *every statute is to be expounded according to its manifest or expressed intention*'.
>
> To whom can the judges turn for help in the task of determining Parliament's intention? The orthodox view is not Parliament or the draftsman; they have to discover that intention from the words that Parliament has used in the particular statute. This proposition has been well brought out by Lord Simon of Glaisdale in *Farrell v Alexander* [1977] AC 59 at p 81; [1976] 2 All ER 721 at p 733; [1976] 3 WLR at p 158:

> … *in the construction of all written instruments including statutes, what the court is concerned to ascertain is, not what the promulgators of the instrument meant to say, but the meaning of what they have said.* It is in this sense that 'intention' is used as a term of art in the construction of documents.

In *Hatton v Beaumont* [1977] 2 NSWLR 211, the court had occasion to observe at p 225:

> The function of the court … is to give effect to the intention of the Legislature. This it may do without difficulty where it appears from the terms of the Legislation that the Legislature directed its attention to the question and expressed an intention upon the effect to be given to the particular provision. But in most cases … such an intention is not expressed and the court's task is, by the application of the appropriate principles, to divine or impute that intention.
>
> It is a truism that Parliament does not always use plain words to express its intention and when this is the case so that the words used fail to convey the intention, courts may then have to resort to the devise of ascertaining that intention by necessary implication from the words which Parliament has used. Courts are, however, slow to find an intention by mere implication, (see *Young v Farrah & Nicholas Enterprises Pty Ltd* (1976) 13 SASR 444 at p 454 per Hogarth J). (Emphasis added.)

[16] In the light of the authorities aforesaid, the court's task is to look at the words in the above cited provisions of the STA 1985 and apply the plain meaning of the words of the STA 1985. However, if the words used are not clear, then the court may adopt the purposive approach in construing the meaning of the words used.

[17] The plaintiff was established under s 39 of the STA 1985 which provides that a management corporation consists of all the parcel proprietors, including the proprietor of the provisional block. A proprietor is defined to include a person or body for the time being registered as the proprietor of a provisional block (s 4 of the STA 1985). A provisional block is also defined as (a) a block in respect of a building proposed to be, or in the course of being, erected on building or land, for which a separate provisional strata title is applied for; (b) in relation to an approved strata plan, such a block shown therein, for which a provisional strata title is to be registered; and (c) in relation to a book of strata register, such a block shown therein, for which a provisional strata title has been registered (s 4 of the STA 1985).

[18] In this instance, the provisional strata title in respect of the provisional block has already been issued. Accordingly, the provisional block falls within the definition of para (c) above. As the proprietor of a provisional block within the meaning of s 4 of the STA 1985, the defendant qua 'proprietor of the provisional block' is automatically included under s 39(1) of the STA 1985 for the purposes of the establishment of a management corporation. Therefore, the

duties and powers of the management corporation encompasses the provisional block. In other words, the provisional block comes under the purview of the management corporation. In this regard, it is pertinent to note that the defendant's representative was present at the third AGM.

[19] A management corporation is, inter alia, required to manage and properly maintain the common property and keep it in a state of good and serviceable repair (s 43 of the STA 1985). A management corporation is required to establish a management fund to meet the administrative expenses for the purposes of controlling, managing and administering the common property, paying rent, rates and premium of insurance and discharging any other obligation (s 45(1) of the STA 1985). Pursuant thereto, a management corporation is empowered to levy contributions on the proprietors in proportion to the share units or provisional share units of provisional blocks (s 45(3) of the STA 1985).

[20] It is abundantly clear from the abovementioned that the language employed in the STA 1985 is clear and unambiguous. As such, it is not the function of this court to re-write the statute in a way it considers fair, just and reasonable. It must be reiterated that it is not for the court to disagree or comment on the policy of any Act which it may be called upon to interpret. It is the clear and manifest object and intention of the STA 1985, that the management corporation shall be established for the purposes of controlling, managing and administering of the common property. Towards that declared objective, the management corporation is required to establish a management fund; under which the management corporation is empowered in general meeting to determine and raise the amounts and levy contributions on the proprietors of the share units of provisional blocks. For the foregoing reasons, the defendant's contention is discounted for being devoid of any merit.

GROUND (B)

[21] The holding of the second and third AGMs respectively on 14 August 2010 and on 13 August 2011 were contrary to s 45(3)(a) of the STA 1985. Those meetings did not determine the amount to be raised for administrative expenses. Instead, the meetings proceeded straight away to levy on the defendant and the other proprietor of the parcels in the condominium project the monthly contributions under s 45(3)(b) in the sums of RM22 per share unit and RM24.20 per share unit respectively. Those acts are ultra vires and void (*Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd* [2002] 2 SLR 1, at pp 2, 8, 9 (CA).

Decision

[22] At the second AGM held on 14 August 2010, a budget was tabled

putting forward the amounts to be levied on the proprietors. The budget was adopted in the general meeting; this fact is evidenced in the minutes of the second AGM (exh G encl 9) at p 8 where it is minuted that by a majority on a show of hands the contribution to the management fund be fixed at RM22 per share unit per month. It was also agreed by a unanimous vote that the interest on late payment be fixed at the rate of 10%pa.

[23] By a letter dated 7 January 2011 (exh H encl 9) the plaintiff notified the defendant of the amount of contribution due and payable to the management fund. In its reply dated 17 January 2011 (exh CTC5 encl 11), the defendant had in fact accepted that the amount had been duly determined by the plaintiff in general meeting. The defendant only complained about the same rate levied on it as a provisional block on the basis that the level of services were not the same as that for the other share units.

[24] At the third AGM held on 13 August 2011, the plaintiff agreed by a majority on a show of hands that the contribution to the management fund be fixed at RM24.20 per share unit per month to be levied on the proprietors and proprietors of provisional blocks effective 13 August 2011.

[25] On the basis of the above facts as corroborated by the minutes of the second and third AGM, it is the court's finding that the plaintiff have complied with sub-s (3) of s 45. Accordingly, the defendant's contention is without merit.

GROUND (C)

[26] The plaintiff failed to serve on the defendant the two separate notices required under sub-ss (1)–(2) of s 53 of the STA 1985 prior to the filing of this action (*R v Commissioners of Inland Revenue, ex parte Newfields Developments Ltd* [2001] 4 All ER 400, p 407; *Tan Sek Ho v Singapore Dental Board* [1999] SLR 757, pp 769–770; *Majlis Peguam v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271, p 295 (SC); *Majlis Perbandaran Pulau Pinang v Boey Siew Thian & Ors* [1979] 2 MLJ 127, p 129 (FC).

Decision

[27] This contention is misconceived for the simple fact that sub-s (1) of s 53 merely provides that the management corporation may serve a two weeks notice on the proprietor. The s 53 of the STA 1985 notice is not mandatory in nature. The plaintiff has a discretion whether to issue the notice or not. Accordingly, the plaintiff is not precluded from filing this action for the recovery of the contributions against the defendant (*Sing Hoe Motor Co Ltd v*

Public Prosecutor [1968] 2 MLJ 54; *Public Prosecutor v Ong Ah Kau & Ors* [1976] 2 MLJ 31; *Re Yong Tet On Paul, ex p Chung Khiaw Bank Ltd* [1996] 1 MLJ 721).

[28] The authorities cited by learned counsel for the defendant are distinguishable on the facts and law. In *Tan Sek Ho*'s case, the High Court of Singapore held that the word 'may' in s 17of the Singapore Dentists Act (Cap 76) the phrase 'The Board may cancel a certificate …' did not vest a discretionary or permissive or in imposing the punishment of erasure from the register. However, the High Court added that it imposed an obligation as it was the only punishment provided. In the *Tan Sri Muhamed Yusoff* 's case, the Supreme Court held that the word 'shall' in s 15 of the Legal Profession Act 1976 is mandatory or directory in nature. In the *Newfields Development*'s case, the House of Lords held that on a true construction of the word 'may' in sub-s (6) of s 416of the Income and Corporation Taxes Act 1988, the IRB had no discretion as to making of the attributions. That construction was supported by the absence of any person identified as entrusted with a discretion (which is not the case here) but also by the absence of any grounds upon which a discretion should be exercised. In *Boey Siew Thian*'s case, the word 'may' in s 80 of the Local Government Act 1976 was coupled with a duty 'shall'. The Federal Court held that where a power is coupled with a duty, the power cannot be divorced from the duty. They are inseparable; whoever exercises the power, he it must who has to perform the duty, which is a condition precedent (which is not the case here) for the exercise of the duty.

[29] For the foregoing reasons, the defendant's arguments are devoid of merit.

GROUND (D)

[30] The defendant is not liable to pay the contributions of RM270,662.69 for the period Jan 2010 – Aug 2010 and RM160,616.86 for the period Aug 2009 – Dec 2009. These contributions were not approved in any of the AGMs of the plaintiff pursuant to s 45 of the STA 1985.

DECISION

[31] This is not an issue as learned counsel for the plaintiff conceded that these two sums in question were not sanctioned in the plaintiff's AGM. Be that as it may, the court is empowered to grant summary judgment for part of the claim under O 14 r 3(1) of the ROC 2012.

ADDITIONAL ISSUE RAISED BY THE DEFENDANT'S COUNSEL

[32] Learned counsel for the defendant also submitted that in the event that

the defendant is liable to pay the contributions to the plaintiff, the amount of the contributions must be such sums as are 'just and reasonable' or 'just and expedient' (s 41A(2)(b) and 67A(2) of the STA 1985; *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345; *Mokhtar bin Abdul Razak & Anor v Shamsiah bte Saman (suing as widow and beneficiary to Abdul Razak bin Hj Senawi, deceased)* [1997] 1 MLJ 493). A just and reasonable contribution would be by reducing by 75% the contribution that has been computed in accordance with the provisional share units of the provisional block (s 41(1) of the Singapore Building Maintenance and Strata Management Act (Chapter 30C)).

Decision

[33] The defendant's arguments on this issue is unsubstantiated. Further, the defendant's reliance on s 41(1) of the Singapore Building Maintenance and Strata Management Act is irrelevant for the simple reason that in that legislation there is an express provision for the reduction of the contribution during the period any building is being erected or not yet completed.

PENULTIMATE ISSUE RAISED BY THE DEFENDANT'S COUNSEL

[34] Learned counsel for the defendant further submitted that the plaintiff is not entitled to claim interest at 10% on late payment of the contributions because the plaintiff is and was at all times not entitled to claim from the defendant the various contributions.

Decision

[35] Clause 6.5 of the deed of covenant expressly provides for interest at the rate of 10% to be chargeable on outstanding sums due for payments for maintenance and upkeep of the common property. Further, the imposition of 10% interest rate was determined by the plaintiff in general meeting in accordance with the limit of not more than 10% set by s 45(3)(c) of the STA 1985. In the premises, the plaintiff is entitled to levy interest at 10% in respect of late contributions.

FINAL ISSUE RAISED BY THE DEFENDANT'S COUNSEL

[36] Lastly, learned counsel for the defendant argued that in the event that the defendant is liable to pay any contributions, the defendant will seek to set off against that contribution the sum of RM24,105.70 being the premium for fire insurance of the provisional block; which sum had been paid by the

defendant to the plaintiff.

Decision

[37] The premium for fire insurance is not included in the contribution. This is evident from the statement dated 7 February 2011 (exh CTC 6 encl 11) issued by the plaintiff to the defendant. The plaintiff has taken out property insurance on the defendant's provisional block (exh L encl 12). Accordingly, there is no basis for any set off.

[38] For the foregoing reasons, the court entered judgment for part of the plaintiff's claim in the sum of RM793,555.40 together with interest and costs.

Judgment for part of plaintiff's claim entered together with interest and costs.

Reported by Kohila Nesan